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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 RALPH INTERNATIONAL THOMAS,

No. C 93-0616 MHP

10 Petitioner,

ORDER RE PETITIONER'S MOTION TO
STRIKE

11 v.

12 ROBERT K. WONG, Acting Warden of
California State Prison at San Quentin

13 Respondent.
14 _____/

15 On January 8, 2009, petitioner filed a Motion To Strike Allegations Set Forth In Section VIII
16 (Additional Facts Developed In Post-Conviction Discovery) of the State's Answer to his amended
17 habeas petition. On January 22, respondent filed an opposition. On February 10, 2009, petitioner
18 filed a reply. For the reasons discussed below, petitioner's motion is granted.

19 **BACKGROUND**

20 Petitioner was convicted and sentenced to death in Alameda County Superior Court in June
21 1986 for the murders of Greg Kniffen and Mary Gioia in Berkeley in the early morning hours of
22 August 16, 1985. Kniffen and Gioia were followers of the Grateful Dead who had come to Berkeley
23 for a concert. They were shot while staying at Rainbow Village, a homeless encampment on the
24 shores of the San Francisco Bay. Gioia's body was seen floating in the San Francisco Bay on the
25 morning of August 16. Kniffin's body was recovered from the water the next day. Petitioner was
26 arrested shortly after the murders.

27 The Supreme Court of California affirmed petitioner's convictions and death sentence on
28 April 23, 1992. *People v. Thomas*, 2 Cal. 4th 489 (1992). Petitioner subsequently filed two state
habeas petitions, both of which were denied.

1 Petitioner filed a federal habeas petition containing exhausted and unexhausted claims on
2 April 15, 1996. This court stayed the federal petition pending petitioner's exhaustion of claims in
3 state court.

4 Petitioner filed a state exhaustion petition on August 1, 1997. On January 24, 2001, the
5 Supreme Court of California issued an Order To Show Cause. Following an evidentiary hearing
6 held in August and September 2002, the Supreme Court of California issued an opinion finding
7 petitioner's trial counsel's performance deficient for failing to investigate leads indicating that a third
8 person – a blond man known as "Bo" – could be the real killer. *In re Thomas*, 37 Cal. 4th 1249,
9 1253 (2006). Nonetheless, the court concluded that counsel's performance was not prejudicial
10 because an adequate investigation would have yielded only three additional witnesses, whose
11 testimony would not have swayed the jury given the strength of the prosecution's case. *Id.* at 1269-
12 77.

13 Following the conclusion of state exhaustion proceedings, petitioner filed the instant
14 amended petition on January 30, 2008. Respondent filed an answer on July 2, 2008. Petitioner filed
15 a traverse on January 9, 2009.

16 ANALYSIS

17 Petitioner requests that the court strike Section VIII (Additional Facts Developed In Post-
18 Conviction Discovery) of respondent's Answer on the grounds that it contains irrelevant and
19 prejudicial material. In Section VIII, respondent summarizes portions of the deposition testimony of
20 James Chaffee – petitioner's trial counsel, Kenneth Pollard – a coroner's investigator, Harry Shorman
21 – one of the cofounders of Rainbow Village, Megan Berry – a Grateful Dead follower, as well as
22 records relating to petitioner's prior criminal history.

23 Respondent opposes petitioner's request on the grounds that petitioner's Fed. R. Civ. P. 12(f)
24 motion is inapplicable to habeas proceedings under Rule 11 of the Rules Governing Section 2254
25 Cases, which provides that the federal rules of civil procedure apply in habeas proceedings only to
26 the extent that they are not inconsistent with habeas rules. Respondent alleges that here, Fed. R.
27 Civ. P. 12 (f) is inconsistent with Rule 5(c) of Rules Governing Section 2254 Cases and Northern
28 District Habeas Local Rule 2254-27(a)(3), both of which require the submission of the state record

1 in federal court. Respondent asserts that the records containing the additional facts were properly
2 lodged in compliance with these rules, and accordingly are properly before the court.

3 Fed. R. Civ. P. 12(f) provides that a court "may order stricken from any pleading . . . any
4 redundant, immaterial, impertinent, or scandalous matter."

5 "'Immaterial' matter is that which has no essential or important relationship to the
6 claim for relief or the defenses being pleaded." "'Impertinent' matter consists of
7 statements that do not pertain, and are not necessary, to the issues in question."
8 Superfluous historical allegations are a proper subject of a motion to strike.

9 *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993) (internal citations omitted); *rev'd on*
10 *other grounds*, 510 U.S. 517 (1994).

11 Contrary to respondent's assertions, Fed. R. Civ. P. 12(f) is not inconsistent with Rule 5(c)
12 or Habeas L.R. 2254-27(a)(3). Rule 5(c) requires respondent to submit with its answer those
13 portions of the state record which respondent considers relevant. Northern District Habeas Local
14 Rule 2254-27(a)(3) requires that respondent lodge with the court copies of "petitioner's and
15 respondent's pleadings in any state habeas corpus proceedings." Nothing in these rule conflicts with
16 a court's ability to strike redundant, immaterial, impertinent or scandalous matter from a pleading.
17 Neither Rule 5(c) nor Habeas L.R. 2254-27(a)(3) preclude the application of Fed. R. Civ. P. 12(f) to
18 habeas proceedings. Indeed, courts have routinely applied Fed. R. Civ. P. 12(f) to habeas
19 proceedings. *See, e.g., Hale v. Howes*, No. 07-12397, 2008 W.L. 2858458 (E.D. Mich. 2008);
20 *Ingels v. Jackson*, No. 00-01003, 2007 WL 201039 (S.D. Ohio 2007).

21 Here, under Fed. R. Civ. P. 12(f), Section VIII of the answer must be stricken as it contains
22 irrelevant and prejudicial material. In this section, respondent cites the following facts:

- 23 1) Trial counsel Chaffee testified that during a meeting, petitioner remarked that the
24 authorities would never find his rifle;
- 25 2) Chaffee testified that petitioner told him that he disposed of the camouflage clothing he
26 was wearing on the night of the murders by putting them in a collection box for the poor;
- 27 3) Coroner's investigator Kenneth Pollard testified that when Gioia's body was being pulled
28 from the Bay, he heard petitioner, who was standing about 40 feet away, say "That's Mary"
while the body was still face down in the water;
- 4) Harry Shorman, a co-founder of Rainbow Village, testified that he heard petitioner say

1 "That's Mary" as Gioia's body was being recovered;

2 5) Megan Berry, a Grateful Dead follower, testified that she once heard petitioner state that
3 he never wanted to go back to jail again;

4 6) Petitioner had been previously convicted of violent sexual assaults on four women.

5 At issue in the amended habeas petition currently before the court are primarily petitioner's
6 ineffective assistance of counsel claims. The court must decide: (1) whether counsel's performance
7 was so deficient that it fell below an "objective standard of reasonableness" and (2) that the deficient
8 performance was prejudicial, rendering the results of his trial unreliable or fundamentally unfair.
9 *See Raley v. Ylst*, 470 F.3d 792, 799 (9th Cir. 2006) (quoting *Strickland v. Washington*, 466 U.S.
10 668, 688, 692 (1984)). The facts outlined above are not relevant to the issue of whether petitioner's
11 counsel was ineffective. As Mr. Chaffee admitted at the evidentiary hearing, petitioner's statements
12 regarding his rifle and clothing had no effect on his trial strategy or preparation. Doc 11(n), lodged
13 by respondent on Nov. 6, 2007, at 907. Similarly, the testimony of Harry Shorman and Kenneth
14 Pollard regarding the identification of Gioia's body are not relevant to the issue of the adequacy of
15 Chaffee's performance. Nor are they pertinent to the determination of prejudice, as there is no
16 reason to conclude that had counsel's performance been adequate, additional *inculpatory* evidence
17 would have been presented to the jury. Megan Barry's deposition testimony also is not relevant to
18 the issue of Chaffee's performance. Finally, information pertaining to petitioner's prior criminal
19 history is similarly irrelevant, as well as highly prejudicial.

20 **CONCLUSION**

21 Because Section VIII contains immaterial and prejudicial information, petitioner's motion to
22 strike Section VIII from the answer is GRANTED.

23 IT IS SO ORDERED.

24 DATED: May 4, 2009

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26 Marilyn Hall Patel
27 United States District Judge
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